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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 11, 1998

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Magalie Román Salas, Secretary
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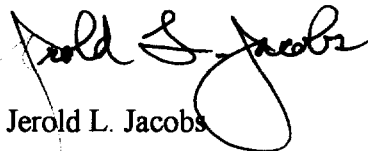
Re: CS Docket No. 98-201
Satellite Delivery of Network Signals

Dear Ms. Salas:

On behalf of our clients, Shockley Communications Corporation, KEZI, Inc., and Soda Mountain Broadcasting, Inc. ("Nine Network Stations"), licensees or proposed licensees of nine commercial network television stations in Wisconsin, Minnesota, and Oregon, transmitted herewith for filing are an original and nine (9) copies of their "Comments of Shockley Communications Corporation, KEZI, Inc., and Soda Mountain Broadcasting, Inc." in response to the Notice of Proposed Rule Making and Order in the above-referenced Docket.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,



Jerold L. Jacobs

Enc.

cc: Don Fowler, Esq. (FCC – By Hand – w/enc.)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Satellite Delivery of Network Signals)	CS Docket No. 98-201
To Unserved Households for Purposes)	RM-9335
of the Satellite Home Viewer Act)	RM-9345
)	
Part 73 Definition and Measurement)	
of Signals of Grade B Intensity)	

TO: The Commission

**COMMENTS OF SHOCKLEY COMMUNICATIONS CORPORATION,
KEZI, INC., and SODA MOUNTAIN BROADCASTING, INC.**

SHOCKLEY COMMUNICATIONS CORPORATION, KEZI, INC., and SODA MOUNTAIN BROADCASTING, INC. ("Nine Network Stations"), licensees or proposed licensees of nine commercial network television stations in Wisconsin, Minnesota, and Oregon, by their attorneys, hereby comment on the principal issues raised in the Notice of Proposed Rule Making in CS Docket No. 98-201 ("NPRM"), FCC 98-302, 63 Fed. Reg. 67439 (1998). In support whereof, the Nine Network Stations show the following:

I. Introduction

1. Shockley Communications Corporation is licensee of Wisconsin Stations WKOW-TV, Madison, WAOW-TV, Wausau, WXOW-TV, LaCrosse, and WQOW-TV, Eau Claire, and proposed assignee of Station WYOW-TV, Eagle River, Wisconsin -- all ABC network affiliates -- and licensee of Station KXLT-TV, Rochester, Minnesota (a Fox network affiliate). KEZI, Inc. is licensee of Station KEZI-TV, Eugene, Oregon, an ABC affiliate, and Soda Mountain Broadcasting, Inc. is licensee of Oregon Stations KDRV(TV), Medford, and KDKF(TV), Klamath

Falls, both ABC affiliates. Chambers Communications Corp. is the parent company of KEZI, Inc. and Soda Mountain Broadcasting, Inc.

2. As the Nine Network Stations will now demonstrate, the rulemaking proposals of the National Rural Telecommunications Cooperative ("NRTC") and EchoStar Communications Corporation ("EchoStar"), which have been generally incorporated into the NPRM, are essentially without merit. However, the Nine Network Stations support certain changes in the present regulatory program and recommend further remedial action by Congress, the Commission, and the satellite industry itself.

**II. Changing the Technical Definition of Grade B Contour
to Legitimize Unlawful Satellite Service is Bad Law,
Bad Engineering, and Bad Public Policy**

3. The legislative history accompanying adoption of the 1988 Satellite Home Viewer Act ("SHVA"), 17 U.S.C. §119, recognized the importance of free local television service, stating (H.R. Rep. 100-887(II) (1988), p. 26, *reprinted* in 1988 U.S.C.C.A.N. 5577 at 5655):

The [House Commerce] Committee is concerned that changes in technology, and accompanying changes in law and regulation, do not undermine the base of free local television service upon which the American people continue to rely. The Committee is concerned that retransmissions of broadcast television programming to home earth stations could violate the exclusive program contracts that have been purchased by local television stations. Depriving local stations of the ability to enforce their program contracts could cause an erosion of audiences for such local stations because their programming would no longer be unique and distinctive.

The Nine Network Stations submit that the economic consequences of amending the definition of "Grade B contour" for purposes of the SHVA would be as detrimental to the future of local television as the House Commerce Committee feared in its Report 10 years ago. Id. Indeed, the Commission itself seems to sense the danger, stating in Paragraph 27 of the NPRM that

“[c]hanging the standard of an acceptable signal could have detrimental effects on the viability of local television stations and, potentially, on the goal of localism”.

4. The Commission is exactly right! Allowing satellite carriers to provide duplicating network programming from distant affiliates will undermine our country’s unique national network/local affiliate broadcast program distribution system, especially diminishing the viewer impact of local news programs, public service announcements, political advertisements, and the commercials of local advertisers. Obviously, these important kinds of local programming, which are the cornerstones of the national/local free over-the-air television program service, are economically worthless if satellite subscribers cannot receive available local network stations through their satellite service subscription and instead get only duplicating distant network affiliates.

5. Moreover, and most importantly, the Commission also states in the NPRM (§27) that it has “no evidence that the underlying technical planning factors have changed in a way that would justify revising the current Grade B signal intensity levels” and that, as a matter of logic, it “cannot modify Grade B intensity so much that it effectively equals or exceeds Grade A intensity” (NPRM at ¶28). Yet, FCC Chairman Kennard has been quoted in the trade press as saying that the Commission might shrink the Grade B contour definition by 15 to 20% in this proceeding, and satellite carriers are asking for even greater shrinkage.

6. It is clear from the rhetoric of the satellite carriers that their object in this proceeding is not to serve beleaguered subscribers who cannot receive local network affiliates off-the-air or to improve competition with cable systems. Rather, the carriers are knowingly and intentionally violating the SHVA in their drive to pick up additional subscribers, and they now have the temerity to ask the Commission to legitimize their unlawful subscriber gains after the U.S.

Districts Courts in CBS Inc. v. PrimeTime 24 Joint Venture, 9 F.Supp.2d 1333 (S.D. Fl. 1998), and ABC v. PrimeTime24, 1998 WL 544286 (M.D.N.C. 1998), held that the SHVA had been violated. Importantly, the Commission notes (NPRM ¶15) that evidence in the two cases “strongly suggests that many, if not most, of those subscribers do not live in ‘unserved households’ under any interpretation of that term”. Under these circumstances, the Nine Network Stations urge that the correct response is to enforce the SHVA, not to ask the Commission to do violence to the technical standards for Grade B contours in order to ratify the satellite carriers’ misconduct.

7. In addition, the Nine Network Stations strongly disagree with the Commission’s tentative conclusions (NPRM ¶20) that Congress did not “freeze” the definition of a signal of Grade B intensity for SHVA purposes in 1988 and that the Commission is free to modify that definition in this proceeding. On the contrary, Congress clearly intended the regulatory status quo to be maintained during “the temporary transitional statutory license [period granted by the SHVA] to bridge the gap until the marketplace can function effectively”. H.R. Rep. 100-887(II) at 15. The SHVA was amended in 1994 to provide that it will cease to be effective on December 31, 1999 unless reauthorized. Thus, during the next 12 months, Congress is obliged to revisit the SHVA and reauthorize, amend, or discard it. The Nine Network Stations maintain that the definition of Grade B intensity is one of the matters that Congress must address and that the Commission is barred from doing so at this time. Moreover, it would be highly inappropriate, as a matter of sound engineering and good public policy, to define Grade B service as one thing for the SHVA and something else for all other Commission regulatory purposes.

III. The Commission May Recommend a Predictive Model to Serve as a Presumption if Congress Amends the SHVA

8. Likewise, the Nine Network Stations do not believe that the Commission currently has authority under the SHVA to develop a model for predicting whether an individual household can receive a signal of Grade B intensity for purposes of the SHVA, if the intended purpose of that model is to substitute a predictive model of reception for actual signal measurements. However, the Commission intimates in Paragraph 23 of the NPRM that its purpose in developing or recommending a predictive model is not to replace actual measurements, but rather for the model to serve as a presumption of service or lack of service for purposes of the SHVA. According to the Commission, such a presumption “could make administration of the unserved household rule easier and more cost-effective for consumers and the industry...[because] [b]roadcasters and satellite providers would be able to rely on a Commission-endorsed model when deciding whether individual consumers are presumed to be eligible to receive satellite-delivered network signals”. Id.

9. If the Commission wishes to follow through with using a predictive model as a “presumption” in measuring SHVA compliance, the Nine Network Stations suggest that it recommend to Congress amending the SHVA to authorize the Commission to create such a presumption. If Congress so acts, the Nine Network Stations would favor presumptive standards based on inputs used in standard Grade B Longley-Rice coverage maps, and these inputs should be the same as those used in the recent CBS SHVA case and as used by the broadcast industry and Netlink and PrimeStar in their satellite broadcast voluntary compliance agreement. This view essentially comports with the Commission’s proposal (NPRM ¶34) that “the Longley-Rice propagation model, as implemented for DTV, be used to refine the Grade B service prediction

for the purpose of SHVA determinations”. Stated differently, the “presumptive” area of local service should be the traditional Grade B area predicted by Longley-Rice coverage maps, and the inputs should not be manipulated, as NRTC and EchoStar propose, to shrink an affiliate’s protected area to its predicted Grade A or less service area.

IV. The Commission Should Adopt a Uniform Methodology For Measuring Signal Intensity at Individual Households

10. The Nine Network Stations agree with the Commission’s tentative conclusion (NPRM ¶25) that it has the authority to adopt a method of measuring signal intensity at an individual household. Indeed, adoption of a uniform approved methodology should eliminate a key source of disagreement when the “unserved” status of a household is challenged and should have the additional attributes of being “relatively low cost, accurate, and reproducible” (NPRM ¶37). The Nine Network Stations recommend that the Commission incorporate into its Rules the signal measurement methodology contained in the broadcast industry’s voluntary compliance agreement with Netlink and PrimeStar. Furthermore, in establishing a uniform methodology, the Commission should continue to use a conventional rooftop outdoor antenna for gauging off-the-air reception -- just as satellite subscribers use outdoor receiving dishes. Also, the test antenna should be pointed toward the transmitting tower of the station whose signal is being tested -- just as a satellite dish will not pick up satellite transmissions if it is not pointed toward the transmitting satellite transponder. And the “loser pays the cost of measurement” mechanism in the SHVA should be continued (NPRM ¶41).

V. “Local-Into-Local” Should be Actively Pursued as the Ultimate Remedy for Unlawful Satellite Service

11. Finally, the NPRM (¶43) inquires whether, if Congress adopted a “local-into-local” extension of the compulsory license in the current copyright laws, so that satellite carriers could

provide subscribers with the signals of their local network affiliates, instead of distant network stations, this would resolve many of the local network affiliates' concerns about damaging broadcast localism. The answer is "Yes". The technology apparently exists to deliver local-into-local service, and the Nine Network Stations urge that Congress should enact "local-into-local" legislation when it revisits the SHVA during 1999 and should include must-carry and retransmission consent requirements comparable to the cable system provisions in the Communications Act of 1934, as amended.

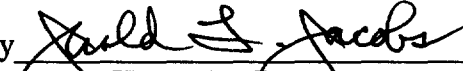
VI. Conclusion

12. It is the satellite industry, not the broadcast industry, that has duped, deceived, and misled millions of innocent subscribers by failing to disclose the limits of the copyright they currently hold to deliver broadcast network programming under the SHVA. Rather than ratifying the carriers' unlawful conduct by amending the SHVA or the Commission's Rules, the Commission and Congress should demand strict compliance with the SHVA until Congress enacts "local-into-local" legislation and satellite carriers implement it. In the meantime, subscribers who are truly in "unserved areas" (under the existing Grade B contour definition) will be able to receive distant network stations via satellite and those who are not in "unserved areas" will be able to receive network service from their local off-the-air network affiliates. In short, there is no impending TV viewer "crisis" concerning the reception of network signals. The real question is whether, under the two recent U.S. District Court decisions (see Paragraph 6 above), satellite carriers will be allowed to retain unlawful subscribers under the SHVA, which they have knowingly and intentionally acquired. The answer should be a resounding "No".

WHEREFORE, in light of the foregoing, the Nine Network Stations respectfully request that the Commission should fashion its SHVA implementation policies in accordance with the above Comments.

Respectfully submitted,

SHOCKLEY COMMUNICATIONS
CORPORATION, KEZI, INC., and SODA
MOUNTAIN BROADCASTING, INC.

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